

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-99-0051 GEB PAN P

vs.

REVERIANO OLIVERA,

Movant.

FINDINGS AND RECOMMENDATIONS

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Movant is a federal prisoner proceeding pro se with a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. On October 22, 2004, movant filed a motion to amend his § 2255 motion to add a claim under Blakely v. Washington, 542 U.S. 296 (2004). On February 4, 2005, petitioner filed a supplement to the motion to amend, seeking to rely in addition on United States v. Booker, 543 U.S. 220 (2005).

Movant was convicted in June 2000 and sentenced in September 2000. His conviction was affirmed on appeal on December 4, 2002. Relief under Blakely is not available on collateral review where, as here, movant's conviction became final before Blakely was decided. See Schardt v. Payne, 414 F.3d 1025 (9th Cir. 2005). Relief is similarly unavailable under Booker. See United States v. Cruz, 423 F.3d 1119 (9th Cir. 2005).

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1 Accordingly, IT IS HEREBY RECOMMENDED that movant's October 22, 2004
2 motion to amend and the February 4, 2005 supplement thereto be denied.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
5 days after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that
8 failure to file objections within the specified time waives the right to appeal the District Court's
9 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: June 15, 2006.

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13 UNITED STATES MAGISTRATE JUDGE

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